

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG DIVISION**

ELECTRONICALLY
FILED
Nov 07 2016
U.S. DISTRICT COURT
Northern District of WV

PNGI CHARLES TOWN GAMING, LLC,
a West Virginia limited liability company,

Plaintiff,

v.

YORK BUILDING PRODUCTS CO., INC.
and YORK BUILDING AGGREGATES,
LLC,

Defendants.

Civil Action No. 3:16-CV- 152 (Groh)

**(Removed from the Circuit Court of Jefferson
County, West Virginia)**

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1332, 28 U.S.C. § 1441, and 28 U.S.C. § 1446, Defendants York Building Products Co., Inc., a Pennsylvania corporation, and York Building Aggregates, LLC, a Pennsylvania limited liability company (collectively, “York”) file this Notice of Removal of this action from the Circuit Court of Jefferson County, West Virginia, Case No. 16-C-257, to the United States District Court for the Northern District of West Virginia. The removal is based on the following grounds:

PLEADINGS, PROCESS, AND ORDERS

1. On October 6, 2016, Plaintiff PNGI Charles Town Gaming, LLC, a West Virginia limited liability company (“PNGI”), filed a Complaint against York in the Circuit Court of Jefferson County, West Virginia, Civil Action No. 16-C-257. To York’s knowledge, the Complaint is the only pleading filed to date in the state court case. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of all process, pleadings, and orders served upon York to date is attached as **Exhibit A**.

2. The Complaint was served on the West Virginia Secretary of State on or about October 17, 2016. York first received PNGI's Complaint on or about October 25, 2016, when York received service of process of the Summons and Complaint from the West Virginia Secretary of State.

DIVERSITY REQUIREMENTS

3. York Building Products Co., Inc. is a Pennsylvania corporation with its principal place of business in York, Pennsylvania.

4. York Building Aggregates, LLC is a Pennsylvania limited liability company with its principal place of business in York, Pennsylvania.

5. PNGI is a limited liability company organized under the laws of West Virginia.

6. In its Complaint, PNGI seeks damages for York's alleged breach of contract. PNGI seeks monetary for the alleged breach of contract including consequential damages and lost profits. *Compl.* ¶ 31.

7. Though not specified in PNGI's Complaint, the damages sought by PNGI exceed \$75,000.00, exclusive of interest and costs. PNGI states that live horse racing events had to be cancelled as a result of the alleged breach of contract. *Compl.* ¶ 26. As such, PNGI claims a loss of revenue and lost profits in all of its business sectors, including, racing, gambling, entertainment, and dining, for several weeks. *Compl.* ¶ 27. In fact, PNGI submitted a pre-suit demand letter to York seeking \$148,170.00 for losses suffered due to the cancelled live horse events.

8. In addition to the lost revenues and profits, the Standard Purchase Order, attached as Exhibit A to the Complaint (the "Invoice"), provides that the cost of the sand delivered to PNGI by York totaled \$46,930.00.

9. Thus, PNGI's pre-suit demand for lost profits coupled with the value of the Invoice demonstrates that the aggregate amount in controversy exceeds \$75,000.00.

10. This United States District Court therefore has original jurisdiction over the Complaint under 28 U.S.C. § 1332(a) because the matter in controversy exceeds \$75,000.00, exclusive of interest and costs, and is between citizens of different States.

11. Because this Court has original jurisdiction over this action under 28 U.S.C. § 1332(a), this action is removable pursuant to 28 U.S.C. § 1441(a).

TIMELINESS OF REMOVAL

12. This Notice of Removal is being filed within thirty (30) days of York's receipt of the Complaint and is therefore timely under 28 U.S.C. § 1446(b).

NOTICE

13. York will give PNGI and the Clerk of the Circuit Court of Jefferson County, West Virginia prompt, written notice of this removal as required by 28 U.S.C. 1446(d).

WHEREFORE, Defendants York Building Products Co., Inc. and York Building Aggregates, LLC hereby remove this action from the Circuit Court of Jefferson County, West Virginia to this Honorable Court.

Dated: November 7, 2016

**YORK BUILDING PRODUCTS CO., INC. and
YORK BUILDING AGGREGATES, LLC,
By Counsel**

/s/ Kelsey L. Swaim

Kenneth J. Barton, Jr. (W. Va. Bar No. 6044)

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of November, 2016, I served the foregoing *Notice of Removal* with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to counsel of record:

Charles F. Printz, Jr., Esq.
J. Tyler Mayhew, Esq.
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Martinsburg, WV 25402

/s/ Kelsey L. Swaim

Kelsey L. Swaim (W. Va. Bar No. 12574)